

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Raphael Mendez,

Plaintiff,
v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
Civil No. 11-1483 ADM/FLN

Federal Judge JAMES M. ROSENBAUM,
U.S. Dist. Ct. Minn., Federal Magistrate
RAYMOND L. ERICKSON, U.S. Dist.
Ct. Minn., Ms. MARY HAUGEN, Unit
Manager, FMC Rochester, Minn., Mr. M.
STALKA, Counselor at FMC Rochester, Minn.,

Defendants.

Raphael Mendez, pro se.

On June 6, 2011, Plaintiff Raphael Mendez, a civilly committed detainee at the Federal Medical Center in Rochester, Minnesota (“FMC-Rochester”), filed this action [Docket No. 1] and sought permission to proceed *in forma pauperis* [Docket No. 2]. The matter was referred to United States Magistrate Judge Franklin L. Noel pursuant to 28 U.S.C. § 636 and Local Rule 72.1.

On June 30, 2011, Judge Noel issued a Report and Recommendation, recommending Plaintiff’s IFP application be denied, and this action be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2) [Docket No. 5]. Plaintiff filed a timely Objection [Docket No. 6]. For the following reasons, Plaintiff’s Objection is overruled and the Report and Recommendation is adopted.

Plaintiff was assigned to a prison job at FMC-Rochester, where he is confined pursuant to 18 U.S.C. § 4246. In August 2006 he brought a lawsuit against officials at FMC-Rochester

arguing the work assignment violated his constitutional rights. See Mendez v. Anderson, Civil No. 06-3307. The Honorable Raymond L. Erickson, United States Magistrate Judge, determined the Court had jurisdiction of the matter but found no constitutional violation, and recommended dismissal. The Honorable James M. Rosenbaum, United States District Judge, adopted the report and recommendation and dismissed the case. There was no appeal.

In November 2010, Plaintiff brought a second lawsuit against Judges Rosenbaum and Erickson, both since retired, arguing they violated his constitutional rights by dismissing his first lawsuit. Judge Noel recommended summary dismissal on the grounds of absolute judicial immunity. This Court overruled Plaintiff's objections and adopted the report and recommendation, dismissing the second lawsuit. Plaintiff appealed and the dismissal was affirmed.

Plaintiff now sues the same Defendants based on the same claims as in his first two lawsuits. The Court agrees with Judge Noel that this action must be dismissed for the reasons set forth in the Report & Recommendation.

An IFP application is properly denied and an action is dismissed when the applicant's complaint fails to state a claim upon which relief can be granted, or seeks damages from a defendant who is legally immune from such claims. 28 U.S.C. § 1915(e)(2)(B)(ii),(iii); Atkinson v. Bohn, 91 F.3d 1127, 1128 (8th Cir. 1996) (per curiam). Plaintiff's claims against Defendants Haugen and Stalka are identical to the claims considered and rejected in Plaintiff's first lawsuit. Plaintiff's claims against Defendants Rosenbaum and Erickson are identical to the claims in Plaintiff's second lawsuit, and like those claims, are barred by judicial immunity.

After an independent, *de novo* review of the files, records and proceedings in the above titled matter, the Objection is overruled and the Report and Recommendation is adopted. For the sound reasons set forth in the Report and Recommendation **IT IS ORDERED:**

1. Plaintiff's application for leave to proceed *in forma pauperis* [Docket No. 2] is **DENIED**;
2. This action is summarily **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: August 5, 2011.